

Supreme Court, U.S.  
FILED

DEC 21 1979

MICHAEL RODAK, JR., CLERK

IN THE  
Supreme Court of the United States

NO. 79-776

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ERICH KOKER and BEATRICE E.  
KOKER, husband and wife,  
Appellant,

v. .

NOEL B. SAGE and WINETTA SAGE,  
husband and wife, and NOEL B. SAGE, JR.,  
Appellee.

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APPELLEE'S MOTION TO DISMISS

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COME NOW Appellees, NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR., and move the Court for dismissal of this appeal, pursuant to Rule 16 of the Rules of the Supreme Court of the United States.

NATURE OF THE CASE

This appeal arises from a civil suit for personal injuries tried in the Superior Court of

the County of King, State of Washington, in June of 1976. The plaintiffs/appellants were represented by counsel, and were awarded judgment in the amount of \$4,600.00.

Appellant, proceeding in propria persona, instituted an appeal before the Appellate Court of the State of Washington, which appeal was denied. Appellant further sought review before the Supreme Court of the State of Washington, which was denied. Appellant is now before this Court, apparently because of a claim that she was denied a fair trial.

APPELLANT HAS FAILED TO INVOKE THE  
JURISDICTION OF THIS COURT

Appellant's first jurisdictional basis is apparently predicated upon the repeal of Rule of Appeal I-50, as a basis for maintaining jurisdiction under 28 USC § 1257(3). Appellant has, apparently, misunderstood a statement in a letter from the Clerk of the Supreme Court of the State of Washington (Appellant's Appendix A-7), wherein the

Clerk indicates that ROA I-50 was repealed and replaced by RAP 12.5(b)(3). This was nothing more than a change in the name and organization of the Rules of Appellate Procedure (RAP). RAP Title 12 now covers appellate court decision and procedure after decision.

Appellant's second basis of jurisdiction apparently is a violation of her civil rights under 42 USC §§ 1983, 1984 and 1985. Appellant then cites 28 USC § 1343(1), (2), (3) and (4). This section sets forth district court jurisdiction to hear civil rights actions. Appellant is appealing from an earlier trial court decision awarding her a verdict in the amount of \$4,600.00 for personal injuries. This case does not involve violations of the 1964 Civil Rights Act as set forth in 42 USC §§ 1983, 1984 and 1985.

Finally, Appellant's request for certiorari review should be denied because the facts involved in this matter, as well as the arguments made to this Court, do not invoke this Court's jurisdiction to hear an appeal.

WHEREFORE, Appellee NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR., ask this Court to dismiss this appeal with each side to bear its own costs.

DATED: December 13th, 1979.

s/  
 ROBERT C. TAYLOR  
Attorney for Appellee

## APPENDIX

### RULE I-50

#### PETITIONS FOR REHEARING

Any party to an appealed case may, after an opinion has been filed, present to the court, in the manner and time as hereinafter provided, a petition for rehearing.

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.

When a rehearing is granted, the clerk shall notify counsel for the respective parties thereof.

When an answer to a petition for rehearing is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the original petition, with a request that he file an answer thereto within fifteen days and serve a copy thereof on opposing counsel.

Three copies each of the petition for rehearing and of the answer thereto, if called for, shall be filed with the clerk.

Petitions for rehearing and answers thereto may be printed, mimeographed, or typewritten. If a petition for rehearing be granted, the court may require additional copies of the petition, answer and briefs to be supplied in the manner indicated by the court.

Taken From: 76 Wn.2d, at 1xix

TITLE 12. APPELLATE COURT DECISION  
AND PROCEDURE AFTER DECISION

RULE 12.1 BASIS FOR DECISION

(a) Generally. Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.

(b) Issues Raised by the Court. If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

RULE 12.2 DISPOSITION ON REVIEW

The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require. Upon issuance of the mandate of the appellate court as provided in Rule 12.5, the action taken and decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in Rule 12.9, and except as provided in Rule 2.5(c)(2).

RULE 12.3 FORMS OF DECISION

(a) Decision Terminating Review. A "decision terminating review" is an opinion, order, or judgment of the appellate court or a ruling of a commissioner or clerk of an appellate court if it:

Taken From: RAP Title 12

(1) is filed after review is accepted by the appellate court filing the decision, and

(2) terminates review unconditionally, and

(3) is (i) a decision on the merits, or (ii) a decision by the judges dismissing review, or (iii) a ruling by a commissioner or clerk dismissing review, or (iv) an order refusing to modify a ruling by the commissioner or clerk dismissing review.

(b) Interlocutory Decision. An "interlocutory decision" is any opinion, order, or judgment of the appellate court or ruling of a commissioner or clerk which is not a decision terminating review.

(c) Ruling. A "ruling" is any determination of a commissioner or clerk of an appellate court. The ruling may be a decision terminating review or an interlocutory decision.

RULE 12.4 MOTION FOR RECONSIDERATION OF  
DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision terminating review which is not a ruling of the appellate court commissioner or clerk. The motion should be in the form and be served and filed as provided in Rules 17.3(a), 17.4(a) and (g), and 18.5, except as otherwise provided in this rule. A party must file a motion for reconsideration of a Court of Appeals decision terminating review as a condition of seeking review by the Supreme Court.

(b) Time. The party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court.



(c) Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

(d) Answer and Reply. A party should not file an answer to a motion for reconsideration or a reply to an answer unless requested by the appellate court.

(e) Length--One Copy. The motion, answer, or reply should not exceed 25 pages in length if double spaced or 20 pages if one and one-half spaced unless additional length is authorized under Rule 18.8. Only one legible copy should be filed.

(f) No Oral Argument. A motion for reconsideration will be decided without oral argument.

(g) Grant of Motion. If a motion for reconsideration is granted, the appellate court may (1) modify the decision without new argument, (2) call for new argument, or (3) take such other action as may be appropriate.

(h) Only One Motion Permitted. Only one motion for reconsideration may be filed, even if the appellate court modifies its decision or changes the language in the opinion rendered by the court.

[Amended July 2, 1976.]

#### RULE 12.5 MANDATE

(a) Mandate Defined. A "mandate is the written notification by the clerk to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision.

(b) When Mandate Issued by Court of Appeals. The clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration of the decision has been earlier filed, (ii) a notice of appeal the Supreme Court has been earlier filed, (iii) a petition for review to the Supreme Court has been earlier filed, or (iv) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, 30 days after filing the order denying the motion for reconsideration, unless a petition for review to the Supreme Court or a notice of appeal to the Supreme Court has been earlier filed.

(3) If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review.

(c) When Mandate Issued by Supreme Court. The Clerk of the Supreme Court issues the mandate for a Supreme Court decision terminating review upon stipulation of the parties that no motion for reconsideration will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration has been earlier filed, or (ii) the decision is a ruling of

the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, upon filing the order denying the motion for reconsideration.

RULE 12.6 STAY OF MANDATE PENDING DECISION OF APPLICATION FOR REVIEW BY UNITED STATES SUPREME COURT

The appellate court will not stay issuance of the mandate for the length of time necessary to secure a decision by the United States Supreme Court on an application for review, except in a case in which the penalty of death has been imposed.

RULE 12.7 FINALITY OF DECISION

(a) Court of Appeals. The Court of Appeals loses the power to change or modify its decision (1) upon issuance of its mandate in accordance with Rule 12.5, except when the mandate is recalled as provided in Rule 12.9, or (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals.

(b) Supreme Court. The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals in accordance with Rule 12.5. The Supreme Court loses the power to change or modify a Supreme Court decision upon issuance of the mandate of the Supreme Court in accordance with Rule 12.5, except when the mandate is recalled as provided in Rule 12.9.

(c) Special Rule for Costs. The appellate court retains the power to act on questions of

costs as provided in Title 14 after the issuance of the mandate.

(d) Special Rule for Law of the Case. The appellate court retains the power to change a decision as provided in Rule 2.5(c)(2).

RULE 12.8 EFFECT OF REVERSAL ON INTERVENING RIGHTS

If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, or the value of the property. An interest in property acquired by a purchaser in good faith under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

RULE 12.9 RECALL OF MANDATE

(a) To Require Compliance With Decision. The appellate court may recall a mandate issued by it to determine if the trial court has complied with an earlier decision of the appellate court given in the same case. The question of compliance by the trial court may be raised by motion to recall the mandate, or by initiating a separate review of the lower court decision entered after issuance of the mandate.

(b) To Correct Error. The appellate court may recall a mandate issued by it to correct an inadvertent mistake, to modify a decision obtained by fraud of a party or counsel in the appellate court, or to modify a decision of the appellate court which was beyond the jurisdiction of the court.

(c) Time for Motion. The motion to recall the mandate must be made within a reasonable time.